



1-1-2010

# Proposition 21: Establishes \$18 Annual Vehicle License Surcharge to Help Fund State Parks and Wildlife Programs and Grants Free Admission to All State Parks to Surcharged Vehicles. Initiative Statute.

Sarah Chesteen

*University of the Pacific, McGeorge School of Law*

Christine D. Harlan

*University of the Pacific, McGeorge School of Law*

Follow this and additional works at: <https://scholarlycommons.pacific.edu/california-initiative-review>



Part of the [Legislation Commons](#)

### Recommended Citation

Chesteen, Sarah and Harlan, Christine D. (2010) "Proposition 21: Establishes \$18 Annual Vehicle License Surcharge to Help Fund State Parks and Wildlife Programs and Grants Free Admission to All State Parks to Surcharged Vehicles. Initiative Statute.," *California Initiative Review (CIR)*: Vol. 2010 , Article 7.

Available at: <https://scholarlycommons.pacific.edu/california-initiative-review/vol2010/iss1/7>

This Article is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in California Initiative Review (CIR) by an authorized editor of Scholarly Commons. For more information, please contact [mgibney@pacific.edu](mailto:mgibney@pacific.edu).

# CALIFORNIA INITIATIVE REVIEW

Proposition 21:  
Establishes \$18 Annual Vehicle License  
Surcharge to Help Fund State Parks and  
Wildlife Programs and Grants Free  
Admission to All State Parks to Surcharged  
Vehicles. Initiative Statute.

Copyright © 2010 by University of the Pacific,  
McGeorge School of Law

By,

**Sarah Chesteen**

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2011*  
*B.S., Justice and Social Inquiry, Arizona State University 2008*

&

**Christine D. Harlan**

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2011*  
*B.A., Sociology, University of California, Davis, 2007*

### **I. EXECUTIVE SUMMARY**

A deep cut in state funds coupled with the threat of state park closure sparked Proposition 21, deemed the “save our state parks” initiative by supporters, but criticized as “just another tax” by opponents. Proposition 21 eliminates the entrance fees for state parks, and establishes a dedicated account funded by an \$18 per year surcharge on all vehicles registered in California. The amounts generated by this fee would be used to replace the loss of the entrance fees, pay for the operation and maintenance of the state park system and sponsor nature conservation.

If Proposition 21 passes, state parks will receive 85% of revenues generated from an \$18 surcharge fee charged on all California vehicles registered, with the remaining 15% dedicated to state wildlife conservation agencies. In return for the fee, registered California vehicles receive a “State Park Access Pass” allowing free admission and parking at state parks, limited only by the parks need to prevent overcrowding and damages to park resources. The fee allows diversion of current General Funds of about \$150 million currently dedicated to state parks to, instead, support other state agencies. The fund expects revenues of approximately \$500 million per year based on the number of cars currently registered in California. Supporters anticipate this level of revenue, along with other user fees assessed for park usage, would allow the park system to complete a backlog of maintenance and operations desired to maintain and staff parks. If approved, the measure potentially provides long-term, stable financing for California state parks and conservation activities throughout the state.

The failure of Proposition 21 would maintain the existing funding structure for state parks consisting of General Fund allocation, along with revenue generated from park activities and bond measures.

One potential drafting issue is the inflexible fixed fee aspect of the initiative. Since the fee is fixed at \$18 per registered vehicle, the only variable figure is the number of registered vehicles in the state. With no sunset or ability to revisit the fixed fee, the revenue may be inadequate to meet resource needs of the state parks in the future.

### **II. THE LAW**

#### **a. Background**

The California Department of Parks and Recreation (DPR), Department of Fish and Game (DFG), State Wildlife Conservation Board, Ocean Protection Council, and other various state conservancies are responsible for the maintenance and operation of California’s State Park

System.<sup>1</sup> California's 278 parks welcome an estimated 79.5 million visitors each year, and many consider the California State Park System to be the state's greatest and most valuable resource.<sup>2</sup> However, in 2008, the Park System was placed on the National Trust for Historic Preservation's list of America's 11 Most Endangered Historic Places, due to years of "chronic underfunding" and "deferred maintenance."<sup>3</sup> In 2009, "unprecedented budget challenges" caused Governor Arnold Schwarzenegger to reduce the amount of funds allocated to the Department of Parks and Recreation (the "Parks") for park operations.<sup>4</sup> To achieve \$14.2 million in General Fund savings, the Parks agreed to reduce spending on maintenance and services, and closed some facilities part-time.<sup>5</sup> With the Parks' decreased resources and increased maintenance backlog, others proposed to replace the General Fund allocation with new funding sources. In 2008, Assemblyman John Laird, D-Santa Cruz, proposed to create a "State Parks Access Pass" in exchange for a \$10 surcharge on vehicle license fees, but it did not pass the Senate.<sup>6</sup> In 2009, the Budget Conference Committee voted to implement changes based on Laird's proposal, but they were not adopted as part of the final budget.<sup>7</sup> If voters approve Proposition 21, a version of the "State Parks Access Pass" will be realized in exchange for a yearly \$18 surcharge on most vehicle registrations, with the capital dedicated to Park maintenance, services, and conservation.

### **b. Existing Law**

Currently, Park management is financed through various sources. In fiscal year 2008-2009, around 32% of the park budget came from the General Fund, 26% from the State Parks and Recreation Fund, and 41% from various other funds, including the Off-Highway Vehicle Trust Fund, Resource Related Fund, Reimbursements, Federal Trust Fund, Tobacco Surtax Fund, Recreational Trails Fund, Habitat Conservation Fund, California Environmental License Plate Fund, Harbors and Watercraft Revolving Fund, Winter Recreation Fund, and California Main Street Program Fund.<sup>8</sup>

---

<sup>1</sup> California State Parks, *Quick Facts*, [http://www.parks.ca.gov/pages/23509/files/0809%20CompleteQuick%20Facts\\_1\\_10.pdf](http://www.parks.ca.gov/pages/23509/files/0809%20CompleteQuick%20Facts_1_10.pdf) (accessed September 14, 2010). [Hereinafter "*Quick facts*"].

<sup>2</sup> *Id.*

<sup>3</sup> National Trust for Historic Preservation, *America's 11 Most Endangered Historic Places 2008: California's State Parks*, <http://www.preservationnation.org/travel-and-sites/sites/western-region/californias-state-parks.html> (2008).

<sup>4</sup> State of California, Governor's Office, *2009 Budget Line Objections*, [http://gov.ca.gov/pdf/press/ABX4\\_1Budget\\_LineItem\\_Message.pdf](http://gov.ca.gov/pdf/press/ABX4_1Budget_LineItem_Message.pdf) (July 28, 2009).

<sup>5</sup> Office of the Governor, *Gov. Schwarzenegger Announces Plan to Keep State Parks Open*, <http://gov.ca.gov/press-release/13366/> (September 25, 2009).

<sup>6</sup> Katy Grimes, *calwatchdog.com*, *Should state hike park fees?*, <http://www.calwatchdog.com/2010/08/11/park-fee-draws-heated-assembly-debate> (August 11, 2010).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The California State Park system was granted large amounts of money during the early 2000's. In 2000, California voters overwhelmingly passed the United States' largest state park bond, totaling \$2.1 billion.<sup>9</sup> In 2006, another bond and initiative statute passed, adding \$5.4 billion with \$4.15 billion of the appropriations from the fund committed or proposed for State Park System acquisitions, development, restoration, nature education and research facilitation.<sup>10</sup> As of January 29, 2010, \$1.23 billion remains in this fund for future appropriations.<sup>11</sup>

However, following 2006, the Parks experienced a reduction of money available for maintenance and operations. In fiscal year 2009-2010, the Parks operated on a \$464 million budget, receiving \$150.5 million from the General Fund, \$122 million from the State Parks and Recreation Fund comprised of user fees and concession revenue, and \$192 million from the miscellaneous other sources, like bonds, taxes, and park use fees.<sup>12</sup> The reduction in funding, coupled with the part-time closures and reduction in services in 2009, led to a public outcry in support of a steady stream of money to fund State Parks.

### **c. Changes in the Law**

Proposition 21 adds a new section to the Revenue and Taxation Code which would collect \$18 per vehicle license and renewal in exchange for the new "State Park Access Pass" and a new section would be added to the Public Resources Code, titled "State Parks and Wildlife Conservation Trust Fund Act" which would be used to fund the California State Park System.<sup>13</sup>

The new section in the Revenue and Taxation Code instructs the Department of Motor Vehicles to collect an \$18 surcharge annually when drivers renew their registration or newly register their automobile in the state. Exempt from this charge are commercial vehicles, trailers, and trailer coaches. Also exempt are certain veterans, already qualified to receive free admission to the parks, who would receive a rebate after paying the surcharge.<sup>14</sup> The surcharge will be designated as the "State Park Access Pass".<sup>15</sup>

In exchange for the \$18 surcharge, all California vehicles receive the "State Park Access Pass" which provides free vehicle admission, parking, and day use at State Parks, subject to limitations such as overcrowding and damage. Specific fees will remain, including camping, tour, swimming

---

<sup>9</sup> California State Parks, *The Seventh Generation: Strategic Vision of California State Parks* (2001) <http://www.parks.ca.gov/pages/91/files/seven01.pdf>

<sup>10</sup> *Quick facts, supra*, n. 1; Cal. "Proposition 84 Allocation Balance Report as of January 29, 2010" <http://bondaccountability.resources.ca.gov/Attachments/b1a801cb-36af-44c7-854e-3b9047a4525f/29/Prop84AllocationBalanceReport11252009.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> *Quick facts, supra*, n. 1.

<sup>13</sup> Proposition 21, State Parks and Wildlife Conservation Trust Fund Act

<sup>14</sup> Cal. Pub. Res. Code § 5011.5.

<sup>15</sup> *Id.*

pool, museum, special event parking and other supplemental fees.

All revenues generated by the surcharge would be deposited into the State Parks and Wildlife Conservation Trust Fund in the State Treasury, created by the new “State Parks and Wildlife Conservation Trust Fund Act.” Eighty-five percent of the money collected will go to the Department of Parks and Recreation for operation and maintenance of facilities, wildlife conservation and protection of natural resources, expansion of public access and recreational activities to the Parks, marine resource protection, grants to state and local agencies to offset the resulting loss of day-use revenues, protection of state park cultural and historical resources, auditing and oversight of Proposition 21 implementation, collection costs, and other related costs.

In addition to funding state park costs, the State Parks and Wildlife Conservation Trust Fund dedicates 15 percent of the collected money towards wildlife conservation activities by appropriating funds to the California Department of Fish and Game, Ocean Protection Council, state conservancies, and the Wildlife Conservation Board.<sup>16</sup> The Fund supports operation of lands owned and operated by Fish and Game, protection and conservation of coastal waters, wildlife habitat and grants to local agencies’ conservation activities.<sup>17</sup> The largest portion dedicated to wildlife conservation, seven percent, supports the California Department of Fish and Game. The Ocean Protection Council, a state agency charged with maintaining California’s coastal ecosystems, receives four percent. The Wildlife Conservation Board and state conservancies each receive two percent of the funds generated by the \$18 vehicle surcharge fee.

In addition, the Department of Parks and Recreation would be mandated by Proposition 21 to prepare a “strategic plan to improve access to the State Park System.”<sup>18</sup> This plan serves to improve access and benefits of the parks to underserved groups and regions.<sup>19</sup>

The Act also includes detailed administrative supervision to assure fiscal accountability and assure the funds acquired from the vehicle surcharge fee will be utilized according to the propositions guidelines.<sup>20</sup> First, the language of the proposition restricts fund utilization by specifically naming only those agencies designated in the proposition language and only for the specific purposes named.<sup>21</sup> Second, the State Auditor conducts an annual independent audit released to the public

---

<sup>16</sup> State Parks and Wildlife Conservation Trust Fund Act, p. 5.

<sup>17</sup> Yes on 21 for State Parks, *General Fact Sheet*, <http://www.yesforstateparks.com/get-the-facts/fact-sheets/general-fact-sheet>, (accessed September 8, 2010) [Hereinafter “*Yes on 21 FAQ*”].

<sup>18</sup> California State Parks Foundation, *Proposed Ballot Measure Filed to Protect California State Parks & Conserve Wildlife*, <http://www.calparks.org/press/2009/proposed-ballot-measure-filed-to-protect-california-state-parks-protect-wildlife.html> (accessed August 19, 2010) [hereinafter *Proposed Ballot Measure*].

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Proposition 21, State Parks and Wildlife Conservation Trust Fund Act, p. 2-6.

and published on the California Department of Parks and Recreation's website.<sup>22</sup> Lastly, the measure charges the Secretary of Natural Resources with creating a Citizens' Oversight Committee to review the implementation and expenditures of funding provided by the act.<sup>23</sup>

### d. Fiscal Impact

The Legislative Analysts' Office (LAO) reports that the initiative will generate an estimated \$500 million per year through the annual vehicle surcharge.<sup>24</sup> This amount may vary each year depending on the number of vehicles registered in the state. The initiative text neglects to state whether a portion of the General Fund would continue to be used for state park maintenance. However, the LAO suggests that the initiative may result in a savings of up to \$200 million per year in the state General Fund and other funds. The LAO also reports that state park revenues would decline an estimated \$50 million per year due to the elimination of daily use fees, which currently range from \$5-\$15 per day depending on the park and time of year.<sup>25</sup> Thus, the net effect of Proposition 21 would be an additional \$250 million per year annually in support of the initiatives goals.<sup>26</sup>

## III. DRAFTING ISSUES

California's initiative process procedures present difficulties in making post enactment changes. The two methods of change are a return to the initiative process, or a post election challenge in which a California court may, in a specific circumstance, correct the challenged language to comply with the law. Specifically, when an initiative's enactment results in unintended consequences, and no provisions allowing legislative amendments exist, another initiative would need to qualify for the ballot and pass to effect necessary changes.<sup>27</sup> However, the cost of bringing an additional initiative is high. For example, signature gathering alone amounts to millions of dollars.<sup>28</sup> In addition, media campaigns to inform voters and garner support can rack up another several million more. These costs may be prohibitive to rectifying flaws in the enacted initiative.

---

<sup>22</sup> *Yes on 21 FAQ*, *supra*, n. 15.

<sup>23</sup> Proposition 21, State Parks and Wildlife Conservation Trust Fund Act, p. 3.

<sup>24</sup> Legislative Analyst's Office, *Proposition 21 Report*, [http://www.lao.ca.gov/ballot/2010/21\\_11\\_2010.aspx](http://www.lao.ca.gov/ballot/2010/21_11_2010.aspx) (accessed October 4, 2010) [hereinafter *LAO Proposition 21 Report*].

<sup>25</sup> California Attorney General, *Official Title and Summary, Proposition 21 Establishes \$18 Annual Vehicle License Surcharge to Help Fund State Parks and Wildlife Programs. Grants Surcharged Vehicles Free Admission to All State Parks. Initiative Statute*, <http://www.voterguide.sos.ca.gov/pdf/english/21-title-summ-analysis.pdf> (accessed September 8, 2010).

<sup>26</sup> *LAO Proposition 21 Report*.

<sup>27</sup> See West's Ann. Cal. Const. Art 2, § 10(c); Kenneth P. Miller, *Constraining Populism: The Real Challenge of Initiative Reform*, 41 Santa Clara L. Rev. 1037, 1047 (2001).

<sup>28</sup> Erwin Chemerinsky, *Challenging Direct Democracy*, 2007 Mich. St. L. Rev. 293, 298, (2007).

Initiatives that are drafted by proponents maximize benefits to meet their particular needs without careful consideration or debate of the potential flaws in the ultimate impact and outcomes when the measures become enacted.<sup>29</sup> Additionally, these flaws may be identified too late - only after the measure qualified for the ballot.<sup>30</sup> Accordingly, these flaws cannot be addressed, leaving voters with discrete choices at the voting booth.<sup>31</sup> For example, Proposition 21 imposes an \$18 vehicle license surcharge in return for a State Park Access Pass and stable funding for state parks and wildlife.<sup>32</sup> However, the amount per vehicle is inflexible over time. The \$18 surcharge would remain in effect until a future initiative receiving voter approval enacted changes in the fee. While the measure reportedly brings in sufficient resources to currently fund state parks and wildlife, there is no evidence to suggest that this amount will continue to be sufficient or necessary over time. Due to the constraints of amending or changing initiatives, the crafters of Proposition 21 failed to allow for adjustment of the fee going forward based on potential changes in the fiscal needs of the parks over time. If the fee becomes insufficient, the state's General Fund may once again be tapped to meet budgetary shortfalls. Alternatively, if the fee is too high and results in waste, another initiative would need approval to reduce the per vehicle amount.

Further, any fee amount issue cannot be rectified via the Legislature. The legislative process provides thoughtful review and deliberation in identifying solutions to California's changing priorities.<sup>33</sup> Some initiatives incorporate provisions which allow the Legislature to introduce new bills to modify existing statutory language. If this were the case here, the Legislature could adjust the fee to reflect changing fiscal realities with state park funding. Both Montana and Michigan used legislative means to enact similar vehicle access pass fees via the state registration.<sup>34</sup> Both state's legislatures have the option to increase or reduce fees, make the fees mandatory or optional, provide exemptions based on need, or make other modifications as needed. Also, both measures resulted in lower, voluntary fees charged to vehicle license registration.<sup>35</sup> Unlike the California initiative, these states have the flexibility to change various aspects of the program to reflect changing needs.

---

<sup>29</sup> Jessica A. Levinson and Robert M. Stern, *Ballot Box Budgeting in California: The Bane of the Golden State or an Overstated Problem?*, 37 *Hasting Const. L.Q.* 689, 699-707(2010).

<sup>30</sup> Michael Vitiello, *Proposition 215: Defacto Legalization of Pot and the Shortcomings of Direct Democracy*, 31 *U. Mich. J.L. Ref* 707, 707-709, (1998).

<sup>31</sup> *Id.* at 712.

<sup>32</sup> *Yes on 21 FAQ*, *supra*, n. 15.

<sup>33</sup> *Levinson*, 37 *Hasting Const. L.Q.* 689 at 702-705.

<sup>34</sup> Montana Fish, Wildlife & Parks, *Entrance Fees*, <http://fwp.mt.gov/parks/visit/entranceFees.html> (accessed September 10, 2010); State Fiscal Agency, *State Park Fees*, <http://www.legislature.mi.gov/documents/2009-2010/billanalysis/Senate/pdf/2009-SFA-0388-N.pdf> (accessed October 3, 2010).

<sup>35</sup> *Id.*



#### **IV. CONSTITUTIONAL ANALYSIS**

One opponent of Proposition 21 has called the surcharge an “arbitrary, non-transportation related taxation.”<sup>36</sup> Although no opponent has elevated this argument to the level of a California Constitution violation, opponents may attempt to challenge Proposition 21 on the grounds that it violates the “single-subject rule.” This rule derives from the language of the California State Constitution, which requires that no initiative may cover more than a single subject, so as to avoid confusion of voters and prevent “logrolling” propositions, which may contain hidden unpopular provisions coupled with popular proposals.<sup>37</sup>

Challengers to Proposition 21 may claim that the vehicle surcharge has no relation to the funding of California State Parks. It may be difficult to identify a nexus linking the mandatory automobile license renewal surcharge to the operation and maintenance of state parks. Not all California automobile owners will utilize the free access to California State Parks, and there are some California residents who may never visit a State Park, but will have to continue to pay this fee regardless. However, if such a challenge is claimed, Proposition 21 will likely survive the “single-subject rule” test, which requires only that an initiative’s parts be “reasonably germane” to each other.<sup>38</sup> The vehicle taxation and State Park Fund spending provisions included in Proposition 21 will likely be held compliant with the “single-subject” rule, as the courts apply the rule liberally.<sup>39</sup> Proposition 21’s common theme of ensuring adequate funds for state park maintenance provides a reasonably germane umbrella for all of its parts. In addition, Proposition 21 is not unnecessarily complicated, nor does it contain evidence of manipulation or hidden motives which increase the likelihood that an initiative violates the “single-subject” rule.<sup>40</sup> Therefore, a challenge brought on these grounds will probably not be sufficient to prevail on a “single-subject” rule claim; thus, the initiative would not be declared invalid.

#### **V. PUBLIC POLICY ARGUMENTS**

##### **a. Supporting Arguments**

Proponents argue that California’s state park funding reductions have put routine park maintenance behind the ideal schedule for a safe, sanitary environment for attendees. Proponents claim that

---

<sup>36</sup> Stuart Leavenworth, Automakers Love Parks – For Commercial, <http://www.sacbee.com/2010/10/03/3073193/automakers-love-parks-for-commercial.html#ixzz11Py9trem> (October 3, 2010).

<sup>37</sup> Cal. Const. art. II, § 8.

<sup>38</sup> California Assn. of Retail Tobacconists v. State of California, 135 Cal. Rptr. 2d 224 (Cal. App. 4th Dist. 2003).

<sup>39</sup> Mary-Beth Moylan, Something for Everyone? *The Future of Comprehensive Criminal Justice Initiatives After Senate v. Jones And Manduley v. Superior Court*, 33 McGeorge L. Rev. 779, 795 (2002).

<sup>40</sup> Sen. of State of Cal. v. Jones, 988 P.2d 1089 (Cal. 1999).

Proposition 21 would fill the deficit in park spending and provide increased funding for routine maintenance and repairs, park staffing, and conservation efforts.<sup>41</sup> Significant reductions in General Fund resources along with deferred maintenance backlogs prompted park officials to look for alternative means to fund parks during California's fiscal crisis. At a time when the park funding from traditional General Fund resources decreases, park attendance continues to increase, compounding financial concerns.<sup>42</sup> Concessions revenues combined with user fees now comprise approximately one-third of the State Park System's budget to help stave off further General Fund reductions.<sup>43</sup> While this combination of concessions and user fees keeps parks open, the fact that spending per visitor is down raises concern about the Parks ability to continue services and responsibly manage the system's environmental, historical and cultural resources.<sup>44</sup>

To alleviate these funding issues, proponents claim that the State Parks and Wildlife Conservation Trust Fund would assure that all parks become well maintained and staffed through sustained, long-term funding.<sup>45</sup> Park staff serve as life guards protecting park attendees by providing rescue and medical services, educators presenting interpretive information, rangers patrolling park facilities maintaining order and safety, and maintenance staff responsible for everything from maintaining trails and roads to stocking restrooms to picking up trash to general repairs of buildings and landscape.<sup>46</sup> The measure allows the state parks to remain open with full staffing and provides resources to rectify the backlog of maintenance required to restore the parks to optimum condition.<sup>47</sup> Proponents maintain that a dedicated fund for state park maintenance protects California's natural resources for future generations.<sup>48</sup> The resource potential from the vehicle license fee potentially provides park goers with the freedom to fully explore and enjoy the full potential that California's vast park system has to offer.

In addition to providing dedicated funds for park operations, proponents argue that the \$18 surcharge offers a valuable trade-off for those who visit state parks, as they will avoid paying daily use fees or purchasing annual passes.<sup>49</sup> The cost to visit state parks can accumulate quickly at roughly \$10 per visit. For single-vehicle families, the cost of just two visits annually to state parks

---

<sup>41</sup> California Secretary of State, Official Voter Information Guide, *Prop. 21 Establishes \$18 Annual Vehicle License Surcharge to Help Fund State Parks and Wildlife Programs, Grants Surcharged Vehicles Free Admission to All State parts. Initiative Statute.*, <http://www.voterguide.sos.ca.gov/propositions/21/> (accessed September 1, 2010).

<sup>42</sup> California State Park and Recreation Commission, *Annual Report to the Governor on The California State park System, 2006-2007*, <http://www.parks.ca.gov/pages/843/files/AnnualReporttotheGovernorontheStateParkSystem2006-2007.pdf> (Accessed October 3, 2010).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Quick facts, supra*, n. 1, at 24.

<sup>47</sup> *Proposed Ballot Measure, supra*.

<sup>48</sup> *Id.*

<sup>49</sup> *Yes on 21 FAQ, supra*, n. 15.

would cost more than the \$18 surcharge proposed on their vehicle each year. For those families visiting state parks frequently throughout the year, the \$18 surcharge is a bargain compared to the \$125 annual pass fee.

Furthermore, proponents state that money from the General Fund will no longer be needed to support state parks. As the state grapples with the prospect of cutting services to the poorest Californians, enactment of Proposition 21 provides the Legislature with an opportunity to divert money previously allocated from the General Fund to the Park budget. Proponents argue that the approximately \$130 million currently directed to state parks could be diverted to support services such as education and other social services.<sup>50</sup>

For example, this year the Governor's proposed budget purports to eliminate adult day health care services for Medi-Cal recipients.<sup>51</sup> Adult day care centers are licensed by the state with the objective of preventing or delaying entry into expensive nursing homes that cost approximately five times the amount of adult day care services per recipient.<sup>52</sup> As many elderly depend on government programs for support, delaying entry into nursing homes reduces society's financial contribution of supporting these individuals.<sup>53</sup> The state would save approximately \$134 million by eliminating this program, but could cost taxpayers much more if the expense for supporting these individuals shifts to nursing home costs. Passage of Proposition 21 could give lawmakers the ability to keep this program in place due to the General Fund savings.

### **b. Opposing Arguments**

Opponents argue that the measure represents a form of taxation, and that California's budget challenges cannot be solved through passage of Proposition 21. As the state continues to see revenue deficits and as demand for services increase, the California Legislature and the Governor need to make difficult prioritization for the scarce resources available in the General Fund. Proposition 21 opponents argue that the annual surcharge fee on every vehicle registered in California with very few exemptions for commercial vehicles and trailers is merely another tax imposed on Californians.<sup>54</sup> Opponents believe instead that funding for state parks should be based on legislative priorities and user fees assessed on those visiting state parks.

---

<sup>50</sup> California State Parks Foundation, *State Parks and Wildlife Conservation Trust Fund Act of 2010 Fact Sheet*, [http://www.calparks.org/takeaction/spap-fact\\_sheet.html](http://www.calparks.org/takeaction/spap-fact_sheet.html) (accessed August 19, 2010).

<sup>51</sup> Hanh Kim Quach, *The Governor's Proposed Cuts to Medi-Cal Would Significantly Affect California's Low-Income Women and Their Families*, 3, [http://www.cbp.org/documents/1005\\_Womens\\_Health\\_bb.pdf](http://www.cbp.org/documents/1005_Womens_Health_bb.pdf) (accessed September 28, 2010).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Californians against Car Tax, *No on 21, About the Scam*, [http://voteno21.com/about/?\\_c=z4jvxc8zuhjvi](http://voteno21.com/about/?_c=z4jvxc8zuhjvi) (accessed September 2, 2010).

Opponents of Proposition 21 provide several policy-based reasons to vote no on Proposition 21. First, they argue that this measure simply imposes a new tax on Californians, allowing the state to ignore state parks during the budget process.<sup>55</sup> Opponents argue that the fee mandates a regressive tax.<sup>56</sup> Rather than consider income, the fee results in a flat tax.<sup>57</sup>

Opponents argue that shifting parks funding from the General Fund by way of a vehicle license fee results in a tax increase via ballot box budgeting.<sup>58</sup> Ballot box budgeting refers to the process whereby a simple majority of voters can dictate nearly all aspects of the state's budget by enacting a proposed initiative instead of the typical legislative procedures for passing a budget.<sup>59</sup> In California, the Legislature is required to pass a budget with a two-thirds majority, whereas initiatives only require passage by a simple majority of 50 percent plus one. In this way legislators are limited in the amounts and distribution of the state's General Fund. For example, in 1988, California enacted Proposition 98 that mandated a specific percentage of the state's budget be dedicated to education.<sup>60</sup> Opponents point out that requiring all registered vehicle owners to pay a fee is tantamount to a tax increase that generates revenue to fund a state agency. Thus, the Legislature and Governor are removed from enacting a new law that raises taxes to meet state budget needs.

Additionally, opponents suggest that the impact from the added fee may in fact increase the likelihood that low income families would not be able to afford travel to state parks to take advantage of the compulsory park passes.<sup>61</sup> As proposed, the current language only provides rebates for veterans who already qualify for an exemption.<sup>62</sup> Provisions for families with low incomes remain non-existent. The mandatory fee contains no provision to apply for a hardship rebate. Whether California vehicle owners choose to visit state parks or not, the measure commands a fee assessed on every vehicle owned regardless of ability to pay or park utilization. Currently, user fees are predicated on the theory that those who utilize the park facilities fund that usage.<sup>63</sup> This law mandates that every vehicle owner subsidize the park system regardless of usage.

---

<sup>55</sup> Patrick Dorinson, *Save the Parks?*, <http://www.foxandhoundsdaily.com/print/7665> (accessed August 23, 2010).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Cal-Tax, *Proposition 21 Car Tax Increase – Ballot-Box Budgeting to Raise More Money for State Parks*, <http://www.caltax.org/issues/Proposition21CalTaxAnalysisPW.pdf> (accessed September 9, 2010) [hereinafter Cal-Tax Car Tax].

<sup>59</sup> Levinson, 37 Hasting Const. L.Q. 689 at 689.

<sup>60</sup> *Id.* at 720-21.

<sup>61</sup> Patrick Dorinson, SFGate.com, *Don't be fooled into paying park fees*, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/08/29/INBM1F3SLT.DTL&type=printable> (August 29, 2010).

<sup>62</sup> State Parks and Wildlife Conservation Trust Fund Act, p. 4.

<sup>63</sup> *Quick facts, supra*, n. 1.

Opponents also argue that if park funding ranks as one of the state's highest priorities, the Legislature ought to consider parks a priority in the annual budget process, not through a new tax.<sup>64</sup> Opponents claim that current appropriations to parks adequately fund the system, and the recent reductions were prompted solely to influence passage of Proposition 21. Thus, the Legislature can reallocate funds to other purposes.<sup>65</sup> Opponents point to Senator Lowenthal's suggestion that the state reduce General Fund expenditures to parks to drive support for Proposition 21, as evidence of the Legislature's plan of purposefully creating a critical financial situation for the parks in order to induce voters to pass the vehicle surcharge.<sup>66</sup>

Opponents postulate that these mandatory fees might also result in increased park utilization, causing unforeseen increased costs.<sup>67</sup> Californians, who, without the fee, might chose to stay home, would instead visit a state park knowing that no fees would be paid.<sup>68</sup> As park utilization increases, so will the cost to staff and maintain the parks.<sup>69</sup> If traffic into the parks increases, preservations costs could correspondingly increase as well.<sup>70</sup> The cost to maintain these areas could likewise increase. Thus, opponents argue that the State Park Access Pass does not provide the conservation benefits promised.

Opponents also argue that Proposition 21 fails to provide free access to all of the parks as claimed. According to the proposed measure, the state could exempt certain parks from accepting the "State Park Access Pass" and charge additional fees for access.<sup>71</sup> Currently a \$125 unlimited "all-access" state park parking pass excludes 25 parks and visitors must pay additional fees to access them.<sup>72</sup> Opponents argue that the same 25 parks will remain excluded from the State Park Access Pass proposed. Opponents believe that since these fees remain in place, as well as fees for tours, swimming pool entrance, boating facilities, per-person entry park fees and overnight fees, the measure is not being properly portrayed as free access to state parks.<sup>73</sup>

Another potential issue is that the fee is charged per vehicle, not per family. Many families in California are multi-vehicle families where the fee is compounded annually for every vehicle they register. This measure comes at a time when vehicle license registration is increasing as a way to close California's deficit.<sup>74</sup> Proposition 21 asks voters to increase the amount vehicle owners pay

---

<sup>64</sup> *Cal-Tax Car Tax*, *supra*, n. 58.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> California Department of Motor Vehicles, *Frequently Asked Questions FAQ*, [http://www.dmv.ca.gov/faq/faq\\_vlf.htm](http://www.dmv.ca.gov/faq/faq_vlf.htm) (accessed October 1, 2010).

to register their cars in order to subsidize the state's budget shortfalls generally and resulting reductions in state park funding specifically.

Lastly, unlike previous funding measures on the ballot comprised mainly of bond measures, the surcharge continues until voters pass another initiative to either sunset the fee or otherwise adjust the amount. Opponents argue that once the state parks complete the backlog of scheduled maintenance, the fund continues to collect surplus money, resulting in economic waste in a climate where funds could be better utilized elsewhere.

### **VI. CONCLUSION**

A “yes” vote on Proposition 21 provides a stable source of income to the California State Parks and other state wildlife conservation agencies, with an estimated revenue stream of \$500 million annually offsetting current budget resources estimated at \$300 million annually. The measure requires the Department of Motor Vehicles to impose a mandatory \$18 surcharge fee on all vehicles registered in California, except larger commercial vehicles, mobile homes and permanent trailers. In return for paying the vehicle surcharge fee, California vehicles will be able to enter state parks without paying day use fees costing \$5-\$15 or purchasing an annual pass costing \$125. Passage of Proposition 21 potentially allows the Governor and Legislature to divert General Funds, currently allocated to state parks, to other state funding priority areas like education and social programs including health care.

A “no” vote on Proposition 21 would result in maintaining the current funding process for state parks, with the Parks receiving support from the General Fund allocated by the yearly budget, park user fees, and other sources. The backlog of maintenance will need to be funded from increased General Fund sources, user fee increases, or bond measures. California vehicle owners will not be subjected to a mandatory vehicle pass fee and will continue to pay parking and daily use fees for State Park entrance.